



April 30, 2020

Via email and FOIAonline

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460
Email: hq.foia@epa.gov

Re: Freedom of Information Act Request for Information Related to the Cooperative Agreement between EPA's Office of Pesticides Program and the Pesticide Educational Resources Collaboratives for the Funding, Development, and Use of Pesticide-Related Educational Materials

Dear Freedom of Information Officer:

On behalf of Migrant Clinicians Network, Earthjustice submits this request for records in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the U.S. Environmental Protection Agency's (EPA's) implementing regulations, 40 C.F.R. § 2.107(l).

In accordance with FOIA, please provide us with all of the following records:

All records from January 1, 2014, through the date of this request, related to the Cooperative Agreements between EPA's Office of Pesticides Program and the Pesticides Educational Resources Collaborative (PERC) and PERC-Medical (together, the PERCs) at the University of California Davis Extension in collaboration with Oregon State University. This request includes, but is not limited to: (1) the Cooperative Agreements between EPA and the PERCs, and any amendments thereto; (2) the notice of the grant award and any accompanying information to the University of California Davis Extension and Oregon State University; (3) all records related to the development, funding, or use of the Worker Protection Standards (WPS) Compliance Assistance Library and all other pesticide-related educational resources developed by the PERCs; (4) all records, including emails, memoranda, letters, or notes constituting or reflecting communications between EPA and individuals, organizations, associations, other government entities, Tribal entities, industry, or other groups or affiliations related to the funding, development, or use of the PERCs' pesticide-related educational resources; and (5) all quarterly and yearly financial reports from the PERCs.

The use of the word "record" above includes, but is not limited to, documents in all forms (including electronic), information, emails, faxes, text messages, memoranda, letters, comments, reports, summaries of telephone conversations, handwritten notes, meeting minutes, messages sent through Signal or other secure platforms, or any other materials.

In the event that you determine that you can disclose only some of the information contained in a record that falls within the scope of this request, please provide us with a copy of the record with only the information that you have determined to be properly treated as confidential redacted.

FEE WAIVER REQUEST

Pursuant to 5 U.S.C. § 552, we request a waiver of fees that EPA would otherwise charge for searching and producing the records described above, because MCN satisfies both fee waiver requirements.

I. MCN Satisfies the First Fee Waiver Requirement.

First, FOIA dictates that requested records be provided without charge “if disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1). To determine whether the FOIA request meets this first fee waiver requirement, EPA analyzes four factors: (i) the subject of the request; (ii) the informative value of the information to be disclosed; (iii) the contribution to an understanding of the subject to the public; and (iv) the significance of the contribution to the public understanding. 40 C.F.R. § 2.107(l)(2)(i)–(iv). As demonstrated below, all four factors related to the first fee waiver requirement, as specified in EPA’s FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)–(iv), weigh in favor of granting the fee waiver request.

A. The Requested Records Concern the Operations or Activities of the Federal Government.

The subject matter of the requested records concerns “identifiable operations or activities of the Federal government,” 40 C.F.R. § 2.107(l)(2)(i), insofar as the requested records relate to the Cooperative Agreements—funded by taxpayer dollars—between EPA and the PERCs, and the development, funding, and use of the PERCs’ pesticide-related educational resources.

B. Disclosure of the Requested Records Is Likely to Contribute to Public Understanding of Government Operations or Activities.

Disclosure of the requested records is “likely to contribute” to an “increased public understanding,” 40 C.F.R. § 2.107(l)(2)(ii), of government operations or activities because such disclosure will enable the requesters and the public to understand what the PERC Cooperative Agreements—funded by taxpayer dollars—promised in terms of deliverables, and whether the PERCs’ pesticide-related educational resources satisfy those deliverables. The requested information is not already accessible through EPA’s website.

C. Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in the Government's Cooperative Agreements with the PERCs for the Development of Taxpayer-Funded Pesticide-Related Educational Resources.

Disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in” learning about the EPA’s Cooperative Agreements with the PERCs to fund the development of pesticide-related educational resources (i.e., manuals, videos, factsheets, posters, mobile tools, and guides, etc.) for use by farmworkers, public health professionals, non-profit educators, medical professionals, and others interested in pesticide safety. *See* 40 C.F.R. § 2.107(l)(2)(iii). Disclosure will allow the public to understand whether the PERCs are satisfying their Collaborative Agreements with EPA to produce pesticide-related educational resources, using taxpayer dollars, to promote the safe use of pesticides and prevent pesticide exposure to applicators and handlers, farmworkers, and their families.

Disclosure of these records to Migrant Clinicians Network (MCN) will “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” 40 C.F.R. § 2.107(l)(2)(iii), because MCN has “expertise” related to pesticide safety and the “ability and intention to effectively convey [this] information to the public.” 40 C.F.R. § 2.107(l)(2)(iii). MCN is a nonprofit organization with more than 10,000 constituents that has made safeguarding workers from pesticide exposures one of its top priorities. MCN’s work is overseen by a board of directors comprised of clinicians, researchers, policy makers, and academics with experience in, and commitment to, the health of farmworkers and pesticide safety. MCN employs a professional staff of 31 based in five offices and three satellite locations across the United States that carry out its work as a professional home for a national network of clinicians serving farmworkers and their families, and other immigrant populations.

Accordingly, MCN has developed expertise in the area of pesticide safety. To further its work to protect against the dangers of pesticide exposures, MCN holds trainings, conducts research and outreach on pesticides and public health, and develops and promotes environmental and occupational health programs for the safety of farmworkers and others exposed to pesticides. MCN disseminates this information to farmworkers, their advocates, medical professionals, and the public at large. Because of its expertise in this area, MCN is prepared to evaluate the requested records once they are received. In particular, MCN has strong familiarity with WPS, making MCN well equipped to review the PERCs’ materials to assess their compliance and consistency with the full range of WPS requirements. MCN can also assess whether the materials are written and presented in a way that farmworkers and other people exposed to pesticides can understand. Thus, MCN can evaluate whether the PERCs are producing educational materials, funded by taxpayer dollars, that satisfy the terms of the PERCs’ Cooperative Agreements with EPA.

In addition, upon analyzing the information it receives through this request, MCN is well prepared to share that information and its findings. MCN already has mechanisms in place to share information obtained from the requested records with the general public and with other interested organizations, such as through its pesticide education programs. *See* <https://www.migrantclinician.org/toolsource/235/pesticides/index.html>. MCN can write an entry for the MCN website (which receives 314,000 unique visits per year), or highlight the

information in an email newsletter to its more than 10,000 constituents. In addition, MCN's quarterly clinical publication, *Streamline*, is distributed via mail to 3,800 stakeholders and is available on MCN's website. MCN also distributes a bimonthly bilingual e-newsletter that reaches more than 4,000 constituents. MCN's news blog averages two to four posts per week and counts among its 600 readers journalists and reporters who rely on MCN for updated content on migrant and immigrant health concerns. These blog posts are amplified by MCN's social media pages, including Facebook, Twitter and LinkedIn, which together have almost 3,000 followers. In 2019, these pages featured over 1,000 posts, with a combined 202,519 engagements. MCN also disseminates findings in collaboration with partners, including farmworker organizations, community health centers, NIOSH-funded agricultural centers, AgriSafe Network, the Agricultural Safety and Health Council of America, and other organizations.

In sum, disclosure of the requested documents is "likely to contribute significantly to public understanding" of EPA's activities concerning pesticide safety for farmworkers and others, 40 C.F.R. § 2.107(l)(2)(iii), because MCN intends to analyze the information in the released records and to disseminate it to other interested organizations and to the broader public, through one or more of the many communication channels referenced above.

D. The Contribution to Public Understanding of EPA's Operations or Activities Will Be Significant.

The public understanding of EPA's approach to funding, developing, and using pesticide-related educational resources through the PERCs, "as compared to the level of public understanding existing prior to the disclosure, [will] be enhanced by the disclosure to a significant extent." 40 C.F.R. § 2.107(l)(2)(iv). For instance, information about communications between EPA and the PERCs could shed light on what deliverables EPA expected to receive from these Collaborative Agreements, and whether the PERCs are fulfilling those obligations and developing appropriate resources to advance pesticide safety for farmworkers.

II. MCN Satisfies the Second Fee Waiver Requirement.

Disclosure of the requested records would also satisfy the second prerequisite of a fee waiver request because MCN does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(3). This request "is not primarily in the commercial interest of the requester," 40 C.F.R. § 2.107(l)(1), as MCN is a 501(c)(3) nonprofit organization with no "commercial interest that would be furthered by the requested disclosure" of information. 40 C.F.R. § 2.107(l)(3)(i). Indeed, MCN's sole interest in obtaining the requested information is to broaden public understanding of the Collaborative Agreements and the resources the PERCs are developing and providing through these Agreements, using taxpayer dollars, as they relate to educational resources on pesticides.

Accordingly, this request meets the two requirements for a fee waiver. In the event that fees are not waived, please notify and inform us of the basis for your decision.

INSTRUCTIONS FOR RECORD DELIVERY

To the extent that the records are available in a readily accessible electronic format, we would prefer to receive the documents electronically, by email, in their native format, including all metadata. If electronic copies are unavailable, we will accept paper copies. Please send records to Carrie Apfel at capfel@earthjustice.org or mail them to:

Carrie Apfel
Earthjustice
1001 G Street, N.W., Suite 1000
Washington, DC 20001

In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at 202-797-4310.

Thank you for your assistance in this matter.

Sincerely,

/s/ Carrie Apfel

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